IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:07.09.2007

CORAM:

THE HON'BLE MR. JUSTICE P.JYOTHIMANI

WRIT PETITION NOs.2886, 2887 of 2000 & 18421 of 2001.

N.P. Jayakumar .. Petitioner in WPs.2886/2000 & 18421/2001

C.S. Padmanabhan .. Petitioner in WP.2887/2000

Vs.

1. The Chief Engineer (Distribution)
   Chennai Region (TNEB)
   K.K.R. Ramasamy Buildings
   800, Anna Salai, Chennai 2.

2. The Superintending Engineer
   Chennai Electricity Distribution
   Circle/West, Anna Nagar, Chennai-40. ..Respondents in all WPs.

3. The Superintending Engineer
   Chengalpattu Electricity
   Distribution Circle,
   Chengalpattu 2. .. R.3 in WP.2886/2000

Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records pertaining to the order dated 01.11.99, 01.10.99 and 23.03.2000 respectively passed by the 1st respondent in Memo.No.26173/874/BI/98-99, 25815/856/BI/98-7 and 011335/470/B-I/1995 respectively and quash the same and consequently direct the respondents to return back the amount already deducted from the petitioner's salary.

For petitioners : Mr. R. Natarajan
For respondents : Mr. M. Vaidyanathan

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COMMONORDER

The petitioner in WPs.2886 of 2000 and 18421 of 2001 is the same. The petitioner in the said writ petitions has been working as a Store Custodian Grade I under the respondent Tamil Nadu Electricity Board. He was transferred from Sub-stores, West Korattur to the Central Stores, Thimmavaram, Chengai Electricity Distribution Circle on 07.06.1997, directing him to handover the charge to one C.S.Padmanaban, the Store Supervisor (Construction), Ambattur.

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2. It is the case of the petitioner that he has sent a representation to the second respondent on 07.06.1997 requesting to grant 15 days time to handover the charge in a complete manner. According to the petitioner, the process of handing over the charge commenced on 08.06.1997 and he handed over the duplicate key to the said C.S.Padmanaban, petitioner in W.P.No.2887 of 2000 keeping the original key with him, which has to be handed over to the said Padmanaban, after completion of all formalities of taking charges. It is the further case of the petitioner that during the course of handing over the charge, on 16.06.1997, after completing his duty, the said C.S.Padmanaban, the Store Supervisor closed the doors and sealed the lock both in the stores and the gate promptly and went home. However, on the next day, i.e., on 17.06.1997, at 8.00 am the sealed lock was found broken and some of the materials belonging to the respondent Board were found missing, about which the Assistant Engineer (Construction), Ambattur lodged a complaint in Korattur Police Station on 17.06.1997. The petitioner was suspended from service on 23.06.1997 by the order of the Executive Engineer, Ambattur regarding the alleged theft occurred on 16.06.1997 in the Sub-Stores, Korattur. It was, thereafter, the second respondent by his communication dated 28.06.1997, has sanctioned eight working days from 08.06.1997 to 17.06.1997 to handover the charge of the Sub-stores, Korattur, to the petitioner in W.P.No.2887 of 2000.

3. The petitioner was issued with a charge sheet on 08.07.1997 by the Executive Engineer on the allegation that he has not handed over the keys to the Store Supervisor C.S.Padmanaban, till the date of theft. The petitioner has submitted his explanation on 01.08.1997 to the Executive Engineer, denying the charges levelled against him and requested him to furnish materials. The charges were levelled against the petitioner as per the Board's Standing Order Nos.19(iii) and 19(ix), which are as follows:

> "19(iii). Theft, fraud or dishonesty in connection with the Board's property or business.
> 19(ix). Habitual negligence or neglect of work."

According to the petitioner, as per Regulation 11(3) of Chapter III of Tamil Nadu Electricity Board Employees (Discipline and Appeal) Regulations, separate charge should be framed in respect of each charge and therefore, framing a single charge clubbing two different charges is in violation of the Board's Regulations. The police complaint in respect of theft has been closed on 09.12.1997 as undetectable.

4. It is the case of the petitioner that the Enquiry Officer without considering the material facts has submitted the finding and on the basis of the Enquiry Officer's report dated 07.01.1998, the second respondent has issued a second show cause notice dated 21.04.1998, for which the petitioner has submitted his explanation on 05.06.1998. The second respondent has passed final order dated 04.07.1998, directing the

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petitioner to pay a sum of Rs.50,080/- towards the cost of the stolen properties and the same should be deducted from the salary of the petitioner.

5. It is, as against the said order of the second respondent, the petitioner has preferred an appeal to the first respondent on 07.09.1998. In the meantime, he has also sent a representation to the third respondent on 07.09.1998, requesting him not to recover the cost of the stolen properties pending disposal of the appeal. In spite of the said representation, the third respondent has made deduction of Rs.1,080/- from the salary of the petitioner for the month of September, 1998 and also Rs.1,000/- in the months of October and November, 1998 and ultimately, on 20.11.1998, the third respondent has rejected the request of the petitioner for postponement of implementation of the final order passed by the second respondent till the disposal of the appeal. It was, against the said order of the third respondent, the petitioner has filed W.P.No.20417 of 1998, which was disposed of by this Court on 09.07.1999 with direction to the first respondent to dispose of the appeal dated 07.09.1998. Ultimately, the first respondent, by the impugned order dated 01.11.1999, has rejected the appeal, as against which the petitioner has filed W.P.No.2886 of 2000, on various grounds including, that it is violative of Articles 14 and 21 of the Constitution of India, arbitrary and illegal and the order is a non-speaking one and against the provisions of Board's Regulations and the enquiry itself was conducted without giving sufficient opportunity and so on.

6. In respect of the same incident, against the petitioner in W.P.No.2887 of 2000, who was working as a Deputy Stores Officer, Ambattur Sub-stores, who was also given an additional charge of Sub-stores, Korattur, a charge was framed on 08.07.1997, alleging that he has not received the key of the Stores from the petitioner in W.P.No.2886 of 2000, viz., N.P.Jayakumar, even after the superior officers directed him to take over charge from him and that he did not insist the said Jayakumar to hand over key, nor informed the fact to the officer concerned. In the meantime, the petitioner was placed under suspension on 23.06.1997 and the petitioner submitted his explanation on 04.08.1997, denying the charges levelled against him. The Executive Engineer, Ambattur ordered to conduct enquiry against the alleged charges by order dated 27.08.1997. The Superintending Engineer, CEDC/West, Anna Nagar issued an order dated 22.09.1997 stating that the order of suspension issued against the petitioner was revoked and further stating that the petitioner was deemed to have been relieved from duty on 30.06.1997, due to retirement on attaining the age of superannuation.

7. Based on the findings of the Enquiry Officer, a second show cause notice was issued to the petitioner on 21.04.1998. In the meantime, the Police authorities, on 09.12.1997 reported that the theft was undetectable and the case was closed. The petitioner has given a detailed explanation on 02.06.1998, for the second show cause notice. Ultimately, the second respondent, Superintending Engineer has passed the order dated 04.06.1998,

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directing the petitioner to pay a sum of Rs.50,080/- towards the cost of the properties stolen, stating that the same will be deducted from his retirement benefits. It is the case of the petitioner that the repeated representations by himself as well as the petitioner in W.P.No.2886 of 2000, to appoint a competent watchman, was not heeded to by the respondents. It is also the case of the petitioner that one duplicate key was with him under the direction of the Assistant Executive Engineer (construction), Ambattur. Ultimately, the second respondent issued the final order on 4.7.1998 for recovery of the amount. As against the same, the petitioner has filed an appeal to the first respondent on 5.8.1998. In spite of his request to the second respondent not to recover the amount pending appeal, the second respondent has withheld the amount of Rs.50,080/-. Ultimately, the first respondent rejected the appeal of the petitioner by order dated 1.10.1999 as against which the present writ petition is filed on the same grounds as raised by the writ petitioner in W.P.No.2886 of 2000.

8. W.P.No.18421 of 2001 is filed by the petitioner in W.P.No.2886 of 2000, challenging the impugned order of the first respondent dated 23.3.2000 and also for a direction to return the amount already deducted from the petitioner's salary. That was the case relating to the period the petitioner was working as Stores Custodian Grade-I at Korattur Sub Stores of the respondent, Tamil Nadu Electricity Board. Four charges were framed against him on 16.6.1997 in respect of various shortages and also fabrication of Transport Note by altering the date of order to adjust some of the shortages along with lot of discrepancies found during surprise inspection. The petitioner has submitted his explanation on 30.6.1997. A second show-cause notice was issued on 23.6.1998 for which also the petitioner has submitted his detailed explanation on 24.10.1998 and after the enquiry, final order was passed on 24.2.1999 by the Superintending Engineer, viz., the second respondent ordering recovery of some of Rs.37,375.40 from his salary.

9. The petitioner has preferred an appeal on 15.4.1999 before the first respondent and pending appeal, the petitioner has also filed W.P.No.7447 of 1999 challenging the recovery order and the writ petition was admitted and there was an order of injunction and subsequently, the writ petition was disposed of on 8.9.1999 with a direction against the first respondent to dispose of the appeal dated 15.4.1999 within six weeks time and to recover at the rate of Rs.500/- from the salary of the petitioner. Subsequently the first respondent has passed the final order on 23.3.2000, against which the petitioner has filed the present writ petition. The petitioner is challenging the said order of the first respondent on the ground that various charges cannot be clubbed together as per the Regulation 11.3 of Chapter III of the Tamil Nadu Electricity Employees (Discipline and Appeal) Regulations, apart from the violations of the principles of natural justice.

10. The respondents have filed counter affidavits in W.P.No.2886 of 2000 and W.P.No.18421 of 2001. It is the case of the respondents that the

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petitioner in W.P.2886 of 2000 was directed to hand over the charge on his transfer, to the petitioner in W.P.No.2887 of 2000 and the petitioners failed to hand over and take over charge in a proper manner and it is, because of their negligence, it has resulted in theft. It was after enquiry, having found the amount of loss caused by way of theft of articles could not be recovered, the respondents have directed to recover 50% of cost from each of the petitioners. A second show-cause notice was given and after conducting enquiry in a proper manner, recovery was passed and the appeal was disposed of in accordance with law. It was the case of the respondents that the petitioners have never demanded any document, however, the petitioners were allowed to peruse the records. Therefore, it cannot be said that the enquiry was not conducted in accordance with the principles of natural justice. It is the case of the respondents that the Tamil Nadu Electricity Board Employees (Discipline and Appeal) Regulations are applicable only to officers of Class I and Class II and the petitioners are governed by the Standing Orders for the workmen applicable to the clerical department in the Tamil Nadu Electricity Board. The appellate authority has also passed a detailed order which does not require any interference.

11. In respect of W.P.No.18421 of 2001, the respondents stated that as per the duties and responsibilities of the Store Custodian under the Board Proceedings dated 6.6.1995, the issue of materials shall be made only against proper requisition and in case of emergency, materials can be issued only on the authorization of the officer not below the rank of Assistant Executive Engineer and such issue of materials shall be only on the Transport Note and the same must be regularized within six days. In the present case, the materials have been issued without proper requisition or without any authorization of the competent authority and the petitioner has also fabricated the transport note and the quantity of materials have been altered. In these circumstances, four serious charges were framed against the petitioner and fair opportunity was given to the petitioner who also attended the enquiry and he was furnished with copies of the records. The Enquiry Officer has submitted his findings and it was based on the Enquiry Officer's report and based on the past service of the petitioner, a show-cause notice was issued for recovery of Rs.37,375.40 and ultimately, final order came to be passed on 24.2.1999. The appeal preferred by the petitioner to the first respondent was also considered and the same was rejected. The petitioner is bound by the Tamil Nadu Electricity Board Standing Orders for workmen engaged in clerical work.

12.Mr.R.Natarajan, learned counsel for the petitioners in W.P.No.2886 and 2887 of 2000 relating to the handing over and taking over of the charge of the Sub-Stores, Korattur after the transfer of the petitioner in W.P.No.2886 of 2000, would submit that on the orders of transfer passed against the petitioner, he has asked for 15 days time from 7.6.1997, but the second respondent has in fact, sanctioned 8 working days to the petitioner in W.P.No.2886 of 2000 to hand over the charge of Sub-Stores, Korattur to the petitioner in W.P.No.2887 of 2000. He would also submit that inasmuch as the charge against the petitioner is not relating to

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theft, but only on the basis of alleged misconduct in handing over and taking over of keys, the time has been extended even before the happening of theft, and therefore, the charge on the face of it is unsustainable. He would also submit that the petitioner in W.P.No.2887 of 2000 has in fact retired from service and there is absolutely no criminal case against the petitioners in respect of this case. He would further submit that in respect of W.P.No.18421 of 2001, there is absolutely no chance of fabrication of Transport Notes and therefore, the decision arrived at by both the authorities against the petitioners herein as if the petitioner in W.P.18421 of 2001 has manipulated the records is only perverse.

13. On the other hand, Mr.Vaidyanathan, learned counsel for the Electricity Board would submit that the petitioners cannot complain of the violation of the principles of natural justice since the enquiry has been conducted by following the due process. He would also submit that inasmuch as the authorities have followed the Standing Orders and arrived at a conclusion after giving opportunity, this Court cannot reappreciate the evidence in the domestic enquiry and therefore, he prayed for the dismissal of all the writ petitions.

14. I have heard the learned counsel for the petitioners as well as the respondents and perused the entire records.

15. Since the writ petitions in W.P.Nos.2886 and 2887 of 2000 relate to the same charge, I proposed to take up those writ petitions at the first instance. The charge framed against the petitioners in the said writ petitions is that on 7.6.1997, when the petitioner in W.P.No.2886 of 2000 was transferred from Sub Stores, Korattur to the Central Stores, Chengalpattu, he was directed to hand over the charge to the petitioner in W.P.No.2887 of 2000, who was the Store Supervisor at Korattur and the petitioner in W.P.No.2886 of 2000 has failed to hand over the charge and the petitioner in W.P.No.2887 of 2000 has failed to receive the keys and thus, resulted in the theft committed on 16.6.1997, causing loss to the Electricity Board. Therefore, a perusal of the charge shows that the charge is not as if the petitioners have committed theft, but it is only about the handing over and taking over of keys by the petitioners respectively.

16. It is true that the petitioner in W.P.No.2886 of 2000 was transferred on 7.6.1997 and it is the case of the petitioner in W.P.No.2886 of 2000 that he sought 15 days time to complete the handing over of the entire materials since it involved various factors. The petitioner has specifically stated in the affidavit filed in support of the writ petition that the second respondent, viz., the Superintending Engineer, Chennai has sanctioned 8 working days from 8.6.1997 to 17.6.1997 to hand over the charge of Sub Stores, Korattur to the petitioner in W.P.No.2887 of 2000. The said statement made by the petitioner in W.P.No.2886 of 2000 has not been denied by the respondents in the counter affidavit. From this, it is clear that the petitioners were given time by the second respondent up to 17.6.1997 to hand over and

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take over the charge. In the meantime, before the time granted by the second respondent expired, on 16.6.1997 night, the occurrence of theft took place by breaking open the lock in the stores which came to be known on 17.6.1997.

17. It is also not in dispute that there was no police complaint or any finding through investigation against the petitioners in respect of the theft committed in the stores of the respondent Board. In view of the specific stand taken by the petitioners that the time to hand over the charge was given up to 17.6.1997, there is absolutely no difficulty to come to the conclusion that the petitioners cannot be imposed with the charge of either not handing over or not taking over the keys of the stores. It is relevant to point out that the said charge was framed under the Clauses 19(iii) and 19(ix) of the Standing Orders, which admittedly relate to the theft, fraud and dishonesty in connection with the property or business of the Board and habitual negligence or neglect of work. By applying the said Standing Orders, on the factual position, which I have enumerated above, there is absolutely no reason for the respondents to frame such a charge against the petitioners. While the charge itself is relating to handing over and taking over of keys of the stores, the Standing Orders are relating to the theft, fraud, dishonesty and habitual negligence which has no connection with the charge levelled against the petitioners.

18.Even though in normal circumstances, this Court would not interfere with the validity or otherwise of the disciplinary proceedings especially in a domestic enquiry, on the face of the charge framed in the present case against the petitioners, in the context of specific statement made by the petitioner in W.P.No.2886 of 2000 in the affidavit, I am of the considered view that the entire disciplinary proceedings and the domestic enquiry has been proceeded with a totally misconception, which certainly deserves to be interfered with. Even assuming that opportunity was given to the petitioners, it is a glaring case of a totally improper charge having been framed against the petitioners on the basis of which recovery has been made. It is relevant to point out that the first respondent in the impugned order has even gone to the extent of saying that the non-handing over or taking over of the keys of the stores should have been informed to the authorities before the occurrence of theft, but, on the other hand, the second respondent has granted time to hand over the keys up to 17.6.1997 and the occurrence took place on 16.9.1997 and hence, it is not understandable as to how such a charge can be imputed against the petitioners in the factual context.

19. In view of the above said position, I have no hesitation to come to the conclusion that the impugned orders of the first respondent dated 1.11.1999 in W.P.No.2886 of 2000 and dated 1.10.1999 in W.P.No.2887 of 2000 as well as the original orders of punishment passed by the second respondent in both the cases are perverse and liable to be set aside. In view of the same, the writ petitions, W.P.Nos.2886 and 2887 of 2000 are allowed with a direction to the respondents to refund the amount deducted

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from the salary/terminal benefits of the petitioners within a period of four weeks from the date of receipt of a copy of the order.

20.In respect of W.P.No.18421 of 2001, it is certainly standing on a different context. It is not a case of handing over or taking over of charge and the charges framed against the petitioner in this case are as follows:

> "Charge-1: There are shortage of 4,300 meters of 7/2.11 sq.mm. ACSR conductor as per D.R. sheet No.40503 dated 23.5.97 and the value of these materials is approximately works out to Rs.30,100/-. Similarly there is also a shortage of 28.5 kgs. Of Aluminium Flat as per D.R. sheet No.10449 dated 16.5.1997. This kind of lapses constitutes misconduct as per the standing order No.19(iii) relating to the standing order for workmen engaged in clerical department of Tamil Nadu Electricity Board.
>
> Charge-2: There are 15 items of excess materials found in Store as per annexure enclosed which shows clearly the negligence of his duties. This kind of his misconduct is as per standing order No.19 (ix) of standing orders for workmen engaged in clerical department of Tamil Nadu Electricity Board.
>
> Charge-3: While Thiru N.P.Jayakumar was working as Stores Custodian I Grade in Sub-Stores, Korattur he has indulged in fabrication of records in connivances with the Field Officers/Staff by preparing transport NoteNo.12632 dated 17.5.1997 on a later date in order to adjust the above said shortage of 4300 meters of ACSR 7/2.11 sq.mm conductor. As all the immediate higher authorities have stated that no such transaction has been a fabricated one and the transactions thus made is a clear fictitious one to cover up the shortages. This misconduct of the employee is as per Standing Order No.19(iii) of Standing Orders for workmen engaged in clerical departments of the Tamil Nadu Electricity Board.
>
> Charge-4: Similarly the shortage of 28.5 kgs. Of Aluminium Flat detected in the Stores was also found to have been adjusted through an earlier Requisition No.458842 dated 24.2.1997 of the Junior Engineer/J.J.Nagar/West Section. On verification it is also found that the quantity intended is only 5 Nos. but the same was corrected as 6 Nos. without any attestation either by the intending Officer has also confirmed that only 5 Nos. as intended was received by him, more over the same was not entered in the estimate card. In respect of Requisition No.549891 dated 5.5.97 pertaining to Ambattur Central Section the correction there, it has not been attested both by the intending officer and countersigning officer. Also the requisition No.458842 dated 24.2.97 was honoured only on 9.5.97 (i.e.) after expiry of the currency of the Requisition."

21. The charges framed are serious, which include fabrication of records, and the charges contain various minute details relating to the shortages which occurred during the time when the petitioner was working as Store Custodian Grade I in Sub-Stores, Korattur. A reference to the recovery order passed by the second respondent 24.2.1999 shows that in

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fact a detailed enquiry was conducted with sufficient opportunity being given to the petitioner and the shortage of materials was found to be proved against the petitioner, the amount of which was quantified to the extent of Rs.37,375.40. Even a second show-cause notice was given to the petitioner, to which the petitioner has also given his explanation. It is also seen that the first respondent being the appellate authority has in fact considered each and every one of the charges individually and found on merits that the order of the original authority in imposing the punishment does not require any interference. Here is a case where two authorities have on merits and in substance found that the charges against the petitioner are proved and in such circumstances, I do not see any reason to interfere with the impugned order.

22. It is well settled that in cases of domestic enquiry, it is not the strict proof of evidence or the principles of criminal law that is applicable, but the preponderance of evidence is sufficient, as it is held in B.C.Chaturvedi v. Union of India (1997(4) LLN 65) in the following words:

> " 12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an enquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rule of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support there from, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.
>
> 13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-

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extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary enquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel (1964 (4) SCR 718), this Court held at page 728 that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued. "

Moreover, it is repeatedly held by the Supreme Court that the power of judicial review of this Court under Article 226 of the Constitution of India is also restricted. In view of the same, the impugned order of the first respondent dated 23.3.2000, is confirmed and the writ petition in W.P.No.18421 of 2001 stands dismissed.

In the result, W.P.Nos.2886 and 2887 of 2000 are allowed and W.P.No.18421 of 2001 is dismissed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Chief Engineer (Distribution)
   Chennai Region (TNEB)
   K.K.R. Ramasamy Buildings
   800, Anna Salai, Chennai 2.
2. The Superintending Engineer
   Chennai Electricity Distribution
   Circle/West, Anna Salai, Chennai - 40.
3. The Superintending Engineer
   Chengalpattu Electricity
   Distribution Circle, Chengalpet 2.

3 CC To Mr.M.Vaidyanathan, Advocate, SR NO.56393, 56394, 56392.
3 CC To Mr.R.Natarajan, Advocate, SR NO.56050, 56051, 56052.

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KSJ(CO)
RVL 14.09.2007

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